
(2011) 04 AHC CK 0068

In the Allahabad High Court

Case No : Criminal Miscellaneous W.P. No. 5850 of 2011

Nishant Mishra and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 06-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Criminal Procedure Code, 1973 (CrPC) — Section 156(3)
Penal Code, 1860 (IPC) — Section 306, 34

Citation : (2011) 2 ACR 2042 : (2011) 8 RCR(Criminal) 2156

Hon'ble Judges : Arvind Kumar Tripathi, J; Amar Saran, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Amar Saran and Arvind Kumar Tripathi, JJ.—Heard Sri G.S. Chaturvedi, senior advocate for the Petitioners and the learned A.G.A.

2. This petition has been filed for quashing of an F.I.R. dated 23.3.2011 registered at Case Crime No. 106 of 2011, u/s 306/34, I.P.C., P.S. Gurgaon Sadar, district Gurgaon and the consequential proceedings thereto.

3. The F.I.R. lodged by Sri Shahrukh Khan son of the deceased Iqbal Asif Khan alleges that the deceased was working as Taxation Manager in Xerox Company. On 23.3.2011 at 3.30 p.m., the deceased had telephoned the informant and told him that he was very disturbed by his officials. Then the informant himself tried to contact his father but his phone was not picked up. Thereafter, he went to Gurgaon alongwith his maternal uncle (Mama.) In the meantime there was a phone call to the mobile of his "Mama" from the mobile of his father that a corpse was lying in an under-construction building near Southend Opal in Gurgaon. The F.I.R. named five persons including the four Petitioners as having troubled his father causing him to commit suicide.

4. The learned A.G.A. raised a preliminary objection that as the F.I.R.

of this case was registered in Gurgaon, where the matter was being investigated, the High Court at Allahabad had No. jurisdiction to interfere in the matter. Sri G.S. Chaturvedi, learned Counsel for the Petitioners submitted that after 15th (1963) amendment of the Constitution, the powers to issue directions, order or writs to any Government authority or person could also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises, even if the seat of such Government or authority was not within the said territories.

5. It was further argued by Sri Chaturvedi that there was also a suicide note (Annexure-7) which mentioned that the deceased was compelled to commit suicide because of the role played by the four Petitioners, Inder Singh Bisht and Ganesh Sati. The background was that the deceased had to file a writ petition in the High Court. He was given a power-ofattorney by Inder Singh Bist and Ganesh Sati. The deceased was apprehensive that the Petitioners had trapped him into filing the writ petition. The advocate Petitioner from Allahabad, Sri Nishant Mishra asked him to keep the authorization with him. The deceased felt that he had wrongly signed the writ petition. He further stated that his family or sasural members were not responsible for his suicide but the Petitioners and the other accused named above were the only persons responsible. By his mistake a great loss had been caused to the company for which the Petitioners were responsible and they had involved him in this case because of his ignorance. It was also submitted that part of the cause of action related to Allahabad as Nishant Mishra, Advocate Allahabad High Court had assisted in the filing of the writ petition, which the deceased felt he had wrongly filed and because of the guilt of filing which writ petition, he had eventually committed suicide on the fateful day at Gurgaon.

6. Sri G.S. Chaturvedi relied on Madan Mohan Singh v. State of Gujarat and Anr. LXX 2010 ACC 907: 2010 (3) ACR 3075 (SC), for the proposition that when a person gets depressed and commits suicide because he had been wrongly rebuked and harassed by his superior officer against whom he nurses a grudge, even if he honestly feels he has been wronged, it would not disclose any offence u/s 306, I.P.C.

7. Learned Counsel for the Petitioners also placed reliance on the decision of Navinchandra N. Majithia Vs. State of Maharashtra and Others, for the proposition that a writ petition could be entertained in the High Court even where part of the cause of action relating to the matter arises especially after the fifteenth (1963) amendment of Article 226 of the Constitution.

8. Learned A.G.A on the other hand contended that for deciding the territories where any cause or part of the cause of action arises, only the F.I.R. could be looked into and there was No. reference to the suicide note in the F.I.R. in the present case.

9. Furthermore in our view, the case of Navinchandra N. Majithia v. State of

Maharashtra is distinguishable on facts, because it was a case in which the Court recorded a finding that the major part of the cause of action arose in Mumbai and the mere fact that the F.I.R. was registered in a particular State (in that case Shillong), it could not provide the sole criteria for reaching an inference that No. part of the cause of action could arise in another State. It was observed in the said case that the major part of the cause of action had arisen in Mumbai as the company was registered in Mumbai, in which the Petitioner and his family members were principal share holders of one company M/s. Indian Farmers Pvt. Ltd. (I.F.P.L. for short), and they were entitled to enter into a contract to receive rupees 58 crores from Chinara Exports for sale of shares. Chinara Exports did not complete its contract by paying the balance amount within the time allowed, hence the Petitioner had terminated the agreement. Another company M/s. J.D. Holding, Shillong was carved out of Chinara Exports Ltd. Thereafter, in a mala fide manner the complaint was lodged in Shillong in the State of Meghalaya to exert pressure on the Company. All the transactions had taken place at Mumbai and not at any other place outside Mumbai, much less at Shillong or in any other place in the State of Meghalaya. The investigation by the Police of Shillong was said to be oppressive and malicious.

10. As the High Court had refused to interfere, the Apex Court had set aside the judgment of the High Court observing that the main cause of action arose at Mumbai and the F.I.R. had been lodged in a mala fide manner in Shillong, hence the High Court in Mumbai clearly had jurisdiction to entertain the matter. In the present case, we find that the main cause of action has taken place in Gurgaon (Haryana) where the deceased committed suicide because he felt harassed because the Petitioners and other accused persons had forced him to file the petition which in his view he had wrongly signed. This in our opinion would not give jurisdiction to the Allahabad High Court to quash the impugned F.I.R. which was registered at P.S. Gurgaon.

11. We may add that if the investigation is being carried out at a particular place in another State and if the High Court in another State can interfere with the investigation because part of the cause of action is connected with that State, it could give rise to an anomalous position because different High Court may exercise jurisdiction over the same subject- matter in different ways. Also as the investigation had commenced in Haryana where the report etc. were registered, obtaining of police remand and bail etc. would ordinarily be considered by the High Court in Haryana and therefore, the said High Court would have jurisdiction because it was the superior court before which the said subordinate courts would submit the reports of investigation or remands etc. The High Court at Allahabad could ordinarily have No. jurisdiction in such a case.

12. In Asit Bhattacharjee Vs. Hanuman Prasad Ojha and Others, the Allahabad High Court which had entertained a writ petition because part of the cause of action which arose in a matter related to U.P., where the application u/s 156(3), Cr. P.C. was filed in West Bengal, has come in for criticism by the Apex Court.

13. In *Musaraf Hossain Khan Vs. Bhagheeratha Engg. Ltd. and Others*, it has been held that simply because the cheques were issued or the company had its registered office in Kerala, it would not confer jurisdiction on the Kerala High Court to entertain a writ from an order taking cognizance passed in West Bengal for which the Calcutta High Court would have jurisdiction, as the Calcutta High Court exercises superintendence under Article 227 over Courts falling in its jurisdiction.

14. Therefore, without commenting on the merits of the matter, only on the point of jurisdiction, we are not inclined to interfere with the investigation or to quash the impugned F.I.R. which was registered at P.S. Gurgaon (Haryana).

15. At this stage, learned Counsel for the Petitioners pleaded that this Court may grant two months time to the Petitioners to approach the concerned High Court. As held by the Full Bench of this Court in paragraphs 76 to 83 in *Ajeet Singh alias Muraha Vs. State of Uttar Pradesh, Station House Officer and Hans Raj*, which has in turn relied on the Constitutional Bench decision of the Apex Court in *The State of Orissa Vs. Madan Gopal Rungta*, and other decisions that when the High Court refuses to entertain the petition and to grant the main relief, but relegates him to seek another remedy, it would be outside the scope of Article 226 to grant the ancillary relief in the interregnum. In this case as we have chosen not to entertain this writ petition it would be an abuse of the process of law to stay the arrest for any period to enable the Petitioners to approach another High Court which may have jurisdiction in the matter. For all these reasons we find the writ petition devoid of force and it is dismissed.